Consolidated Food Services, Inc. d/b/a Express Gourmet *and* Local 24, Hotel and Restaurant Employees International Union, AFL–CIO. Case 7–CA–44786

March 14, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

The General Counsel seeks summary judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the Union on January 28, 2002, the General Counsel issued the complaint on April 25, 2002,[1] against Consolidated Food Services, Inc. d/b/a Express Gourmet, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On June 11, 2002, the General Counsel filed a Motion for Summary Judgment with the Board. On June 14, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated May 15, 2002, notified the Respondent that unless an answer was received by May 29, 2002, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Michigan corporation with its principal office and place of business at 17177 Sherfield, Southfield, Michigan, has maintained a place of business at Detroit Metropolitan Airport, Romulus, Michigan (the Romulus facility), where it is engaged in the retail operation of a public restaurant selling food and beverages. During the calendar year ending December 31, 2001, the Respondent, in conducting its operations described above, derived gross revenues in excess of $500,000, and purchased and received at its Michigan facilities, products, goods, and materials valued in excess of $5000 from other enterprises located within the State of Michigan, each of which other enterprises had received these products, goods, and materials directly from points located outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Local 24, Hotel and Restaurant Employees International Union, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit (the unit) appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

> All cooks, bakers, storeroom employees, utility employees, hosts/hostesses, cashiers, deli/grill attendants, bartenders, pie bakers/baker helpers, pantry employees, snack bar employees, fast food attendants and servers employed by Respondent at Detroit Metropolitan Airport, but excluding confidential employees, watchmen, and guards and supervisors as defined in the Act.

At all material times, by virtue of successive collective-bargaining agreements, the most recent of which is effective from November 1, 1999, through October 21, 2002, the Union has been the exclusive collective-bargaining representative for purposes of collective bargaining of the unit and has been recognized as such by the Respondent.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On about October 15, 2001, the Respondent ceased its operations at its Romulus facility and terminated all unit employees employed at its Romulus facility.

On about November 28, 2001, the Union, by letter, requested that the Respondent furnish it with certain information, including, *inter alia*, an accounting of all unpaid contractual obligations, including wages, fringe benefits, and accrued vacation pay.

On about November 29, 2001, the Union, by letter, requested that the Respondent engage in bargaining over

[1] The complaint was served on the Respondent by both certified mail and regular mail. The service by certified mail was returned stamped "Final Notice" and "Unclaimed." The copy of the letter sent by regular mail was not returned. It is well settled that the Respondent's failure or refusal to accept certified mail cannot defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). In any event, the failure of the Postal Service to return the documents served by regular mail indicates actual receipt of those documents by the Respondent. *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987).

the effects of the closure of the Respondent's operations at its Romulus facility.

On about February 11, February 20, and March 19, 2002, the Union, by letters, renewed its request for information and to bargain over the effects of the closure of the Respondent's operations at its Romulus facility.

The information requested by the Union regarding an accounting of all unpaid contractual obligations, including wages, fringe benefits, and accrued vacation pay, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about November 28, 2001, the Respondent has failed and refused to furnish the Union with the information requested by it regarding an accounting of all unpaid contractual obligations.

Since about November 29, 2001, the Respondent has failed and refused to bargain with the Union about the effects of the Respondent's closing of its Romulus facility.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing to bargain with the Union concerning the effects on the unit employees of the closing of the Respondent's Romulus facility, we shall order the Respondent, on request, to bargain with the Union concerning the effects of the decision to close. In addition, we shall accompany our bargaining order with a limited backpay requirement designed both to make whole the employees for losses they may have suffered as a result of the failure to bargain about the effects and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).[2] Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Further, having found that the Respondent has failed and refused to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the following information: an accounting of all unpaid contractual obligations, including wages, fringe benefits, and accrued vacation pay.

In view of the fact that the Respondent's facility is currently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Consolidated Food Services, Inc. d/b/a Express Gourmet, Southfield, Michigan, its officers, agents, successors, and assigns, shall

Cease and desist from

(a) Failing and refusing to bargain in good faith with Local 24, Hotel and Restaurant Employees International Union, AFL–CIO, as the exclusive representative of the employees in the bargaining unit set forth below, by refusing to bargain with the Union concerning the effects on the unit employees of the Respondent's decision to close its Detroit Metropolitan Airport facility, and the termination of the unit employees.

> All cooks, bakers, storeroom employees, utility employees, hosts/hostesses, cashiers, deli/grill attendants, bartenders, pie bakers/baker helpers, pantry employees, snack bar employees, fast food attendants and servers employed by Respondent at Detroit Metropolitan Airport, but excluding confidential employees, watchmen, and guards and supervisors as defined in the Act.

(b) Failing and refusing to furnish the Union with information that is necessary for, and relevant to, its performance of its function as the exclusive representative of the employees in the unit.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union concerning the effects on unit employees of the closing of the Respondent's facility at the Detroit Metropolitan Airport, and the resulting termination of the unit employees.

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[2] See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990). In *Transmarine*, the Board ordered an employer that had unlawfully refused to bargain over the effects of its plant closure decision to, inter alia, pay unit employees at their normal rate of pay beginning 5 days after the Board's decision until the first of four events: (1) an effects bargaining agreement was reached; (2) a bona fide bargaining impasse was reached; (3) the union failed to timely request or commence bargaining; or (4) the union failed to bargain in good faith. Id. The Board further specified that "in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ." Id.

(b) Pay the former employees in the unit described above their normal wages when in the Respondent's employ from 5 days after the date of this Decision until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its Detroit Metropolitan Airport facility, and its termination of the unit employees; (2) the date a bona fide impasse in bargaining occurs; (3) the failure of the Union to request bargaining within 5 business days after receipt of this decision, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union;[3] or (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum paid to any of the employees exceed the amount he or she would have earned as wages from the date in October 2001, when the Respondent closed its facility, to the time he or she secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ, with interest, as set forth in the remedy section of this decision.

(c) Furnish the Union with the following information requested in its letter of November 28, 2001: an accounting of all unpaid contractual obligations, including wages, fringe benefits, and accrued vacation pay.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"[4] to all former employees who were employed by the Respondent when it ceased operations at the Detroit Metropolitan Airport on about October 15, 2001.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 14, 2003

Robert Battista, Chairman

Wilma B. Liebman, Member

Dennis Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
MAILED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain in good faith with Local 24, Hotel and Restaurant Employees International Union, AFL–CIO, as the exclusive representative of the employees in the bargaining unit set forth below, by refusing to bargain with the Union concerning the effects on the unit employees of our decision to close our Detroit Metropolitan Airport facility, and the resulting termination of the unit employees.

> All cooks, bakers, storeroom employees, utility employees, hosts/hostesses, cashiers, deli/grill attendants, bartenders, pie bakers/baker helpers, pantry employees, snack bar employees, fast food attendants and servers employed by us at Detroit Metropolitan Airport, but excluding confidential employees, watchmen, and guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to furnish the Union with information that is necessary for, and relevant to, the Union's performance of its function as the exclusive representative of the employees in the unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

[3] *Melody Toyota*, 325 NLRB 846 (1998).

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of The National Labor Relations Board."

WE WILL, on request, bargain with the Union concerning the effects on unit employees of the closing of our facility at the Detroit Metropolitan Airport, and the resulting termination of the unit employees.

WE WILL pay limited backpay to the unit employees in connection with our failure to bargain with the Union concerning the effects of our closing of the Detroit Metropolitan Airport facility.

WE WILL furnish the Union with the following information requested in its letter of November 28, 2001: an accounting of all unpaid contractual obligations, including wages, fringe benefits, and accrued vacation pay.

CONSOLIDATED FOOD SERVICES, INC. D/B/A EXPRESS GOURMET